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10 SHEFA LMV, INC.

ENDORSED
FILED
ALAMEDA COUNTY

APR 3 - 2019

CLERK OF THE SUPERIOR COURT
By AMBIT KHAN Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 SHEFA LMV, INC.,
14 Plaintiff,

15 vs.

16 ORLY INTERNATIONAL, INC.,
17 Defendant.

) Unlimited Jurisdiction
)
) CASE NO. **RG 19013414**
)
)
) COMPLAINT FOR CIVIL PENALTY AND
) INJUNCTIVE RELIEF
) (Health and Safety Code § 25249.5 et seq.)
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1 Plaintiff SHEFA LMV, INC., hereby alleges:
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3 **I. PRELIMINARY STATEMENT**

4 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure
5 to Diethanolamine (“DEA”), which is a chemical known to the State of California to cause cancer.

6 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
7 Safety Code section 25249.6, commonly known as “Proposition 65,” businesses must provide
8 persons with a “clear and reasonable warning” before exposing individuals to chemicals known to the
9 state to cause cancer or reproductive harm.

10 **II. PARTIES**

11 3. Plaintiff is a non-profit, public benefit corporation formed pursuant to the laws of the
12 State of California, composed of California citizens, and represented by and through its counsel of
13 record, the Law Office of Daniel N. Greenbaum.

14 4. Health and Safety Code section 25249.7(d) provides that actions to enforce
15 Proposition 65 may be brought by “any person in the public interest.”

16 5. Defendant ORLY INTERNATIONAL, INC., (“Defendant”) is a business entity with
17 ten or more employees that sells, or has, at times relevant to this complaint, authorized the
18 manufacture, distribution, or sale of lotion products, including but not limited to, Orly® Cuticle
19 Therapy Crème UPC:079245245217, containing DEA, (hereinafter “PRODUCTS”) for sale within
20 the State of California, without first giving clear and reasonable warning.

21 **III. JURISDICTION AND VENUE**

22 6. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
23 because this case is a cause not given by statute to other trial courts.

24 7. This Court has jurisdiction over Defendant, because it is a business entity that does
25 sufficient business, has sufficient minimum contacts in California, or otherwise intentionally avail
26 themselves of the California market, through the sale, marketing, and use of its PRODUCTS in
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1 California, to render the exercise of jurisdiction over it by the California courts consistent with
2 traditional notions of fair play and substantial justice.

3 8. Venue is proper in this Court because the cause, or part thereof, arises in Alameda
4 County because Defendant's PRODUCTS are sold and consumed in this county.

5 IV. STATUTORY BACKGROUND

6 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety
7 Code §§ 25249.5 et seq.) is an initiative statute passed as "Proposition 65" by a vote of the people in
8 November of 1986.

9 10. The warning requirement of Proposition 65 is contained in Health and Safety Code
10 section 25249.6, which provides:

11 No person in the course of doing business shall knowingly and intentionally
12 expose any individual to a chemical known to the state to cause cancer or
13 reproductive toxicity without first giving clear and reasonable warning to such
14 individual, except as provided in Section 25249.10.

15 11. An exposure to a chemical in a consumer product is one "which results from a
16 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
17 consumer good, or any exposure that results from receiving a consumer service." (22 CCR 12601,
18 subd. (b).)

19 12. Proposition 65 establishes a procedure by which the state is to develop a list of
20 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, §
21 25249.8.)

22 13. No warning need be given concerning a listed chemical until twelve (12) months after
23 the chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

24 14. Any person "violating or threatening to violate" the statute may be enjoined in any
25 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

26 15. To "threaten to violate" is defined to mean "to create a condition in which there is a
27 substantial probability that a violation will occur." (*Id.* § 25249.11, subd. (e).)

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1 26. Pursuant to the statute and regulations referenced above, on October 24, 2018,
2 Plaintiff served the Notices of Violation on the Office of the Attorney General, Defendant, as well as
3 all required public agencies.

4 27. Plaintiff is unaware of any governmental prosecution against Defendant.

5 28. At least sixty (60) days have elapsed since service of the Notice of Violation.

6 29. Based upon consultation with multiple experts, Plaintiff alleges that individuals who
7 purchase, handle, or use the PRODUCTS are exposed to DEA chiefly through:

8 a. contact between the lotion and the skin of the hands;

9 b. transfer of DEA from the skin to the mouth, both by transfer directly from the
10 hand to mouth and by transfer of the DEA from the skin to objects that are put in
11 the mouth, such as food, and;

12 c. through absorption of DEA through the skin.

13 30. Such individuals are thus exposed to the DEA that is present on and in Defendant's
14 PRODUCTS in the course of the intended and reasonably foreseeable use of those PRODUCTS.

15 31. At all times material to this complaint, Defendant had knowledge that the lotions
16 contain DEA and that skin may come into contact with DEA.

17 32. At all times material to this complaint, Defendant had knowledge that individuals
18 within the State of California handle Defendant's PRODUCTS that contain DEA.

19 33. At all times material to this complaint, Defendant knew that Defendant's PRODUCTS
20 were sold throughout the State of California in large numbers, and Defendant profited from such
21 sales through, among other things, the sale of Defendant's PRODUCTS that were sold in California.

22 34. Notwithstanding this knowledge, Defendant intentionally authorized and reauthorized
23 the sale of Defendant's PRODUCTS that contained DEA.

24 35. At all times material to this complaint, Defendant has knowingly and intentionally
25 exposed individuals within the State of California to DEA.

26 36. The exposure is knowing and intentional because it is the result of the Defendant's
27 deliberate act of authorizing the sale of PRODUCTS known to contain DEA in a manner whereby
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1 these PRODUCTS were, and would inevitably be, sold to consumers within the state of California,
2 and with the knowledge that the intended use of these PRODUCTS will result in exposures to DEA
3 within the State of California.

4 37. Defendant has failed to provide clear and reasonable warnings that the use of the
5 PRODUCTS in question in California results in exposure to a chemical known to the State of
6 California to cause cancer, and no such warning was provided to those individuals by any other
7 person.

8 VI. FIRST CAUSE OF ACTION

9 (Against Defendant for Violation of Proposition 65)

10 38. Paragraphs 1 through 37 are re-alleged as if fully set forth herein.

11 39. By committing the acts alleged above, Defendant has, in the course of doing business,
12 knowingly and intentionally exposed individuals in California to chemicals known to the State of
13 California to cause cancer without first giving clear and reasonable warning to such individuals,
14 within the meaning of Health and Safety Code section 25249.6.

15 40. Said violations render Defendant liable to Plaintiff for civil penalties not to exceed
16 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief requiring
17 reformulation of the products.

18 PRAYER FOR RELIEF

19 WHEREFORE, Plaintiff prays that the Court:

- 20 1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
- 21 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
22 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant
23 from exposing persons within the State of California to Listed Chemicals caused by
24 the use of their products without providing clear and reasonable warnings, as Plaintiffs
25 shall specify in further application to the court;
- 26 3. Award Plaintiff their costs of suit;
- 27 4. Grant such other and further relief as the court deems just and proper

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Respectfully submitted,

DATED: April 2, 2019



By: DANIEL N. GREENBAUM
Attorney for Plaintiff
Shefa LMV, INC.